

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Power Company d/b/a AmerenIP	:	
And Ameren Illinois Transmission Company:	:	
	:	06-0706
	:	
Petition for a Certificate of Public	:	
Convenience and Necessity, pursuant to	:	
Section 8-406 of the Illinois Public Utilities	:	
Act, to construct, operate and maintain new:	:	
138,000 volt electric lines in LaSalle	:	
County, Illinois.	:	

**REPLY BRIEF OF THE STAFF OF
THE ILLINOIS COMMERCE COMMISSION**

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Pursuant to 83 Ill. Adm. Code 200.800, Staff witnesses of the Illinois Commerce Commission (“Staff”), by and through its attorneys, hereby files its Reply Brief responding to the Initial Briefs filed by Illinois Power Company, d/b/a Ameren IP (“AmerenIP” or the “Company”) and Ameren Illinois Transmission Company (“Transco” or “AITC”) (together “Petitioners” or “Ameren”) Initial Brief (“Ameren IB”) and Proponents of Tourism and Economic Development along I-80, Inc. (“PROTED 80”), in the above-captioned proceeding.

I. INTRODUCTION

As discussed in Staff’s Initial Brief, Staff concurs with the Petitioners that the proposed Transmission Lines are necessary and least cost (see Section 8-406(b)(1)), that the additions are necessary and should be erected to provide adequate service (see Section 8-503), and that Ameren is capable of managing and supervising the

construction of the Transmission Lines (as required by Section 8-406(b)(2)). (Staff IB, at 4) Further, Staff does not oppose or offer any alternative line routes to the routes proposed by Petitioners in its testimony and Petition. (*Id.*, at 5)

Staff recommends that the Certificate be granted to AmerenIP alone, as AmerenIP is capable of financing the proposed construction. Alternatively, if the Commission adopts Ameren's joint financing proposal, then Staff recommends the Commission initiate an investigation of AmerenIP's financial ability to pay dividends to Ameren Corporation without impairment to the utility's ability to perform its duty to render reasonable and adequate service at reasonable rates as required by Section 7-103 of the Act. (*Id.*, at 8) Furthermore, if the Commission grants the CPCN to AmerenIP and Ameren Transco, its approval should be conditioned upon prohibiting Ameren Transco from selling this project or any other asset to AmerenIP above book value. (*Id.*, at 5)

Finally, Staff recommends that the Commission should grant Ameren Section 8-503 authority and state in its order that it understands that through its approval of Ameren's requests in this proceeding, Ameren will also gain eminent domain authority. Staff recommends that the Commission grant Ameren Section 8-503 authority limited specifically to the parcels listed on Staff Exhibit 1.2. Staff also recommends that the Commission instruct Ameren and other future applicants for Certificates under Section 8-406 Certificate and for authority under Section 8-503 to make their requests simultaneously and to accompany their requests with requests for Section 8-509 eminent domain authority.

Neither the Ameren nor any other of the Initial Briefs filed by Intervenors has dissuaded Staff from its positions. Therefore, Staff's recommendations remain the same. Staff's response to Ameren's Initial Brief is set out below.

II. ARGUMENT

A. Line Routes – Least Cost

Contrary to the allegations by PROTED 80 (PROTED 80 IB, at 24-25), Staff did consider the least cost requirement in its analysis. Serious consideration was given to all the alternative routes with regards to least cost. However, the difference in costs for the various routes were insignificant and unsubstantiated, so that other considerations, such as the degree of difficulty to build and maintain, environmental impacts, visual impact and ability to parallel existing utility corridors, overshadowed any differences in cost.

The cost quoted by PROTED 80 for its Alternative #1 route was \$18.2 million, whereas, the cost estimate Ameren provided for its preferred route was \$19.4 million. The difference in the costs quoted between the PROTED 80 alternative route #1 and Ameren's preferred route is a mere 6.6%. The 6.6% difference in the cost estimates of the two routes is well within the contingency factor and the degree of accuracy range of Ameren's estimates. Further, the cost quoted by PROTED 80 for its Alternative #1 route was based on an estimate by Ameren, which Ameren said was unreliable, unverified, and did not include added or special costs unique to that route such as special structures and additional land clear expenses, which were included in the Ameren cost estimate for its preferred route. (Ameren Ex. 16.0 at 6-7) Therefore, a

direct comparison of the costs is not possible, but it appears the cost difference is *de minimus*.

Finally, Section 8-406 (b)(1) of the Act states that the utility is to demonstrate, among other things, that the construction “is the least-cost means of satisfying the service needs of its customers”. Staff believes that the Ameren preferred route is the least-cost means of satisfying the service needs of its customers, the Ameren route is the least difficult to build and maintain, less environmental impacts, less visual impact and parallels existing utility (Interstate 80) corridors more (AmerenIP Exhibit 9.3). Unlike the situation in *Citizens United For Responsible Energy Development, Inc. (CURED), v. Illinois Commerce Commission*, 285 Ill. App. 3d 82; 673 N.E.2d 1159; 1996 Ill. App. LEXIS 917; 220 Ill. Dec. 738, Staff did perform a least cost analysis. Based upon its analysis Staff determined that the costs provided for the proposed routes were not directly comparable, but that they were similar such that other factors outweighed the cost consideration.

B. Financing

To justify its joint financing proposal, Ameren’s Initial Brief (IB) argues:

Despite the fact that AmerenIP’s ratings would not be lowered if it were to finance 100% of the Project, it remains the case that important AmerenIP financial ratios are eroded as a result of financing the Project. This could have the result of delaying the timing of any future rating upgrade, limiting the level of upgrade (i.e. the number of rating notches), and/or increasing the level of any improvement in financial performance (which is offset by the instant degradation) the rating agencies would need to observe in order to facilitate any upgrade. (Ameren IB at 12)

However, Ameren’s rationale for the joint financing proposal could as easily justify an investigation by the Commission into AmerenIP’s ability to pay Ameren Corporation

dividends under Section 7-103 of the Act if the Commission limits AmerenIP's participation in the Project to 10% (or \$2.9 million). Specifically, at the same time AmerenIP argued that funding a \$30 million Project would delay credit rating improvements, it paid a \$73 million dividend payment to Ameren Corporation. Ameren's own witness testified that, all else equal, each of the following ratios would be stronger if AmerenIP used surplus funds to repay a portion of currently outstanding indebtedness rather than paying dividends: (1) funds from operations (FFO) to adjusted gross debt; (2) FFO interest coverage; (3) adjusted gross debt to capitalization; (4) retained cash flow (RCF) to adjusted gross debt; and (5) RCF to capital expenditures. (AmerenIP Ex. 19.2 (Rev.)) AmerenIP's decision to pay dividends rather than paying down debt, in light of its credit rating concerns noted above, shows Ameren is more concerned about paying investors than improving its current credit rating. In Staff's view, AmerenIP's priorities are inconsistent with Section 7-103 of the Act, which prohibits utilities from paying dividends until such dividend can reasonably be declared and paid without impairment of the ability of the utility to perform its duties under the Act. Thus, if the Commission adopts Ameren's joint financing proposal, then Staff recommends the Commission initiate a Section 7-103 investigation into the effect of dividend payments on AmerenIP's ability to perform its duty to render reasonable and adequate service at reasonable rates.

Furthermore, Staff avers AmerenIP's \$73 million dividend payment results in a more severe negative impact on AmerenIP's financial metrics than would AmerenIP financing the entire Project, as demonstrated by Ameren witness Hughes' testimony that (all else equal) adjusting AmerenIP's 2006 year-end financials to reflect a \$61

million dividend payment would cause AmerenIP's debt ratio to increase to 46%. (AmerenIP Ex. 19.2 (Rev.)) In contrast, Staff's ratio analysis shows that funding 100% of a \$40 million Project with new debt would cause AmerenIP's debt ratio to rise to 43%. (Staff IB at 11) Moody's Investors Service ("Moody's") views materially higher debt ratios as weaker than lower debt ratios from a creditworthiness standpoint. (AmerenIP Ex. 19.2 (Rev.)) Mr. Hughes also testified that (all else equal) adjusting AmerenIP's 2006 year-end financials to reflect a \$61 million dividend payment would reduce AmerenIP's RCF to debt ratio to approximately 9%. (AmerenIP Ex. 19.2 (Rev.)) In contrast, Staff's ratio analysis shows that funding 100% of a \$40 million Project with new debt would not affect AmerenIP's RCF to debt ratio; that is, AmerenIP's RCF to debt ratio would remain at 12%. (Staff IB at 11) Moody's views lower RCF to debt ratios as weaker than higher RCF to debt ratios from a creditworthiness standpoint. (AmerenIP Ex. 19.2 (Rev.))

Staff described in detail the reasons why Transco is not capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers. (Staff IB at 15-18) Staff also explained how the Prairie State project differs from the Project at issue in the instant docket, including Staff's rationale for recommending that the Commission apply a higher standard to Transco's 90% participation in the instant docket for Commission approval pursuant to Section 8-406(b)(3) of the Act than it did in Docket No. 06-0179, the Prairie State Order. (Staff IB at 18-19)

However, Ameren's IB contains two inaccurate statements that require correction. First, Ameren alleges that AmerenIP's ability to finance 100% of the instant

Project is challenged because construction of the instant Project overlaps completion of the Prairie State transmission project, which obligates AmerenIP to fund generator interconnection service at an estimated cost of \$87 million. (Ameren IB at 13) Aside from the fact that the Prairie State generator is paying the cost of the interconnection rather than AmerenIP (or Transco) (Staff IB at 19), Ameren witness Hughes testified that this statement was made moot by the Commission's Final Order in Docket No. 06-0179, which set AmerenIP's funding of the Prairie State project at 10% of the total estimated cost, or approximately \$9 million. (AmerenIP Ex. 19.2 (Rev.), p. 1)

Second, Ameren states, "[Transco's] funding will be provided by project sponsors (like Prairie State), or under Ameren's non-state-regulated subsidiary money pool and/or other sources of financing available to Ameren Corporation as described in Notes 5 and 6 to the financial statements contained in Ameren's 2006 Form 10-K." (Ameren IB at 15) Staff notes there are no project sponsors in the instant docket. (Staff IB at 19) Moreover, on March 3, 2008, Ameren filed a petition requesting authority for Transco to enter into a utility money pool agreement and for approval of affiliated interest transactions between the Ameren Illinois utilities and Transco. (Petition, Docket No. 08-0174, filed March 3, 2008) Thus, as of today, Transco has no source of financing available to fund its share of the Project. Further, Ameren has not shown that sufficient surplus funds are available from either Ameren or the utility money pool. If the utility money pool becomes Transco's major source of financing, AmerenIP could end up directly funding 10% of the Project and indirectly funding some, if not all the remaining 90%. As such, the potential benefits to AmerenIP and its customers that Ameren alleges would result from a joint financing proposal would diminish if AmerenIP

makes loans to Transco. At the same time, there would be no reduction to the higher costs resulting from Transco's participation in the Project vis-à-vis AmerenIP's sole ownership, which Staff has described in detail. (Staff IB at 20-21) In summary, having failed to present a verified, dependable source of funding, Transco has not met the requirements of Section 8-406(b)(3).

The basis for Staff's opposition to a Certificate for Transco is relatively simple. As Staff has demonstrated, on which Ameren now agrees (Ameren IB at 11), ratepayers get no benefit at all when Transco is granted a Certificate. On the other hand, Staff has argued that interjecting an affiliate into the process creates a risk that ratepayers will incur additional costs caused by affiliate abuse and/or "incentive rates."

Ameren states that there is no risk that a Certificate for Transco can cause higher ratepayer costs. In its Initial Brief, Ameren tries to assuage any doubts the Commission might have by pointing out that Transco is an entity that the Commission regulates. Thus, Ameren states that, "...AmerenIP and AITC are closely supervised by the Commission and Commission approval is required with regard to many transactions with affiliates..." (Ameren IB at 50) Of course, Dr. Rearden's arguments are necessarily theoretical, because this particular event has not yet occurred. However, based upon economic logic, the potential for increased ratepayer costs is real. And the Commission can lower the probability that ratepayers pay higher costs due to Transco's participation in a straightforward and simple manner by denying the Certificate to Transco. Such an action does not stop ratepayers from enjoying any of the real benefits from the I-80 transmission project.

In its brief, Ameren responds to Dr. Rearden's concern that Transco's involvement represented a trend in Ameren's financial arrangements by noting that AmerenCIPS has recently petitioned for a Certificate for a project rather than involving Transco. Of course, Staff welcomes that approach, but does not concede that this alleviates all its concerns. After all, Ameren is not pledging to refrain from using affiliates to fund future transmission projects. Further, at p. 48 of its IB, Ameren notes that "Two filings - the Prairie State case and the instant docket - do not constitute a "policy" of the Commission." (Ameren IB at 48) However, Ameren states that, "Because the Commission has granted Transco a Certificate and deemed it to be a public utility, Dr. Rearden's arguments now appear moot." (Id., at 46) Thus, Ameren simultaneously argues that the Prairie State docket created no precedent (since it concludes that each case is unique), but the decision in that docket makes Staff's arguments moot. In other words, Ameren states that the Commission is not creating policy in these two dockets, but it believes that Staff's arguments have been settled.

Staff argued in its IB that to the degree that the Petitioners' proposed funding method increased the probability that Ameren's transmission system could be granted incentive rates by the FERC, a Certificate to Transco increased the potential for higher rates than would otherwise be the case. FERC has stated that transmission companies that are more independent are more likely to receive incentive rates. Staff believes that it is not the Commission's intent that the funding method should lead to higher rates for Illinois ratepayers. To that end, Staff recommended that in the event the Commission grants a Certificate to Transco, it should be conditioned upon Transco forgoing applying for incentive rates before the FERC. Ameren disagreed in its Initial Brief. It stated that

this Commission shouldn't interfere in FERC policy, and "To the extent Transco may be entitled to incentive rates, it shouldn't be punished." (Ameren IB at 50) Ameren goes on to note that, "The same rationale holds true for AmerenIP." (Id.) While Staff does not intend to stifle FERC policies, this case is different. The project is going ahead without Ameren needing incentive rates. Ameren itself states that, "It has never been AITC's intention to serve as a joint owner of the project for the purpose of receiving incentive rates. Ameren initially formed AITC to assist AmerenIP in these projects due to AmerenIP's financial instability." (Id., cites omitted) Staff believes that the Commission should take Ameren at its word and condition granting any Certificate to Transco upon no incentive rates. This does not permanently foreclose Ameren from receiving incentive rates, but it does protect Illinois ratepayers from unnecessarily high rates for this project.

For all the foregoing reasons, Ameren's joint financing proposal should be rejected.

C. Eminent Domain

Staff's position regarding eminent domain is set forth fully in Staff's Initial Brief. (See Staff IB at 22-36) The only clarification needed in response to Ameren's Initial Brief is that Staff is not advocating that Ameren proceed with eminent domain prior to having fully exhausted negotiations. Ameren states, "Ameren has determined that it would be more appropriate at present to continue pursuing negotiations with the applicable landowners." (Ameren IB at 51-52) Staff is in complete agreement with that conclusion. Staff's position is not that Ameren should hurry off to circuit court with an eminent domain action. Rather, as Ameren states, it would be more productive to

continue with negotiations until and unless it becomes apparent that the negotiations will not result in an agreement.

Staff's reason for recommending that the Commission address Sections 8-503 and 8-509 simultaneously is to provide the landowners with the maximum opportunity to participate in the Commission proceedings. The issue of eminent domain authority is inextricably linked with Ameren's request for a Section 8-406 Certificate and Section 8-503 authority in this docket, as Ameren has indicated that it will ultimately need eminent domain to construct the Transmission Lines. As discussed in Staff's Initial Brief, the only meaningful opportunity for a landowner to challenge a request for eminent domain authority would be in connection with the determination of the routes for the electrical transmission lines, which is addressed in the Section 8-406 Certificate and Section 8-503 authority proceeding. Once the Commission approves the line route, a landowner would have no basis to challenge a utility's request for eminent domain authority. Ameren raises the requirement for reasonable attempts to acquire the property. However, in Staff's opinion that requirement may delay a grant of eminent domain, but is unlikely to remove the threat of eminent domain.

In Staff's view, by requiring a utility to state in its petition that it is requesting Section 8-509 eminent domain authority, the Commission will remove any question as to whether the affected landowners understand the consequences of the proceeding. Making the process as transparent as possible is beneficial to the Commissioners, as the participation of landowners will help to assure a full and complete record, and to the landowners as it will assure an opportunity to participate in a proceeding which may affect their property rights.

Staff continues to recommend that the Commission state in its order that it understands that by giving Ameren the approval it requests in this proceeding, Ameren will also have eminent domain authority limited specifically to the parcels listed on Staff Exhibit 1.2, but in future Section 8-406 Certificate and Section 8-503 filings, utilities should state in the petition that they are requesting 8-509 authority.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, Staff of the Illinois Commerce Commission respectfully requests that Commission issue a Certificate of Convenience and Necessity as requested to AmerenIP and adopt Staff's recommendations in its Order in this matter.

Respectfully submitted,



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